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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1372 of 1982

with

CROSS OBJECTIONS

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JYOTSANABEN WD/O.DINESHCHANDRA PURSHOTTAMDAS SHAH
Versus
SHAHEBRAO TOTARAM MARATHA

Appearance:
1. First Appeal No. 1372 of 1982
FRESH NOTICE REQD(N) for Petitioner No. 1-2
MR RAJNI H MEHTA for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 10/07/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

#. By this appeal, the original claimants have claimed an amount of Rs.1 lac by way of additional amount towards compensation for the unfortunate and untimely demise of their bread-winner - Dineshchandra Purshottamdas Shah caused in a motor vehicle accident, which occurred on 14.2.1980, between motor cycle No.GRE 8411 which the deceased was driving and a truck bearing No.GRE-5009 driven by respondent No.1 - Sahebrao Totaram Maratha, by questioning the award of Rs.94,532/- by way of compensation with interest @ 6% p.a. from the date of application till the date of payment, as against the claim of Rs.2 lacs, made in MACP Nos.426 and 427 of 1981, by holding the driver of the truck responsible for rash and negligent driving, which caused the accident.

#. We have dispassionately examined the facts emerging from the record, including the evidence, and the submissions raised before us, and we have also considered the relevant and material principles of law of tort governing the grant of compensation under recognized heads, and we are of the clear opinion that the amount awarded by the Tribunal towards compensation for the unfortunate and premature demise of a young man of 24 years and the earning member in the family having photography as his profession and with a meritorious career in his profession, is grossly inadequate. Therefore, we find that the amount of compensation is required to be upwardly revised. However, instead of bifurcating the amount of compensation under different heads, it would be appropriate if globally, the amount of compensation is enhanced, and, therefore, we are of the opinion that the ends of justice will be met if the amount of compensation is enhanced to Rs.1,25,000/- under all the recognized heads with the same rate of interest from the date of application till realization. The cross objections filed by the respondents against the award are noticed to be without any substance and, therefore, deserve to be rejected. We have evaluated the evidence and it is spelt out that the entire accountability for the happening of the unfortunate road accident was on the part of the driver of the truck.

#. In the result, the impugned award of Rs.94,532/= under both the recognized heads shall stand modified and enhanced to a sum of Rs.1,25,000/- with interest at the

rate of 6% per annum from the date of application till the payment thereof, with proportionate costs. The additional amount of compensation shall be equally divided between the original claimants. The appeal shall stand partly allowed in terms aforesaid and the cross objections shall stand dismissed, with proportionate costs. The registry shall transmit the original Record and Proceedings forthwith.

(J.N.Bhatt, Actg.C.J.)

(A.L.Dave, J.)

(sunil)